**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH**

[1] S.B. CRIMINAL MISC. PETITION NO.835/99

Prasanna Kumar Surana

Vs

M/s. Patodia Oil Mill & Ors.

[2] S.B. CRIMINAL MISC. PETITION NO.1017/99

M/s. Patodia Oil Mill & Anr.

Vs.

Prasanna Kumar Surana & Anr.

[3] S.B. CRIMINAL MISC. PETITION NO.1018/99

M/s. Patodia Oil Mill & Anr.

Vs.

Prasanna Kumar Surana & Ors.

[4] S.B. CRIMINAL MISC. PETITION NO.834/99

Prasanna Kumar Surana

Vs

M/s. Patodia Oil Mill & Ors.

DATE OF ORDER :: 10/08/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Sunil Jain for] for Complainant
Mr. R.P. Garg]
Mr. Anurag Sharma, for accused

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All the four petitions since have been filed against common order passed by learned trial Judge dated 7th August, 1999, hence, are decided by the present order.

Criminal Misc. Petition Nos.835 & 834/99 have been filed by complainant-petitioner and Criminal Misc. Petition Nos.1017 & 1018/99 by the partnership firm.

Petitioner-complainant filed a complaint u/s.138 of Negotiable Instruments Act against accused-respondent Nos.1-4 in which it was alleged that respondent Nos.2, 3 & 4 are partners of firm of respondent No.1 M/s. Potodia Oil Mill. Both are dealing in food-grains and pulses. Respondents purchased mustard from petitioners on 26th February to 18th March, 1993 amounting to Rs.6,49,372/- and against which payment for a sum of Rs.3,40,000/- was made and for balance of Rs.3,09,372/- which remained outstanding, at the instance of petitioner, four cheques amounting to Rs.25,000/- each dated 27th April, 1993 were issued to him which were signed by two parters namely; respondent Nos.2 Ashok Kumar Patodia & 3 Dhanraj Jain. When these cheques were presented before the Bank, they were dishonoured with the endorsement that respondents have closed their account. Thereafter, he served notice and within the staturory period available under the Act, a complaint was also filed before learned trial Judge who took cognizance against respondents on 20th October, 1993. It will be relevant to mention at this stage that respondent Nos.3 & 4 jointly filed Criminal Misc. Petition No.1567/93 assailing the order by which cognizance was taken against them by learned trial Judge, which was dismissed by this court by a detailed order on 17th February, 1995 that makes them aware of proceedings being initiated against them. Despite the same, they had not put in appearance before learned trial Judge.

So far as respondent Nos.1 & 2 are concerned, they were duly served and were represented by their counsel. It appears that initially summons were issued and since it could not have been served upon respondent Nos.3 & 4 without making further efforts to see that their presence may be ensured by issuing non-bailable warrants. Learned trial Judge in his order dated 7th August, 1999 observed that since respondent Nos.3 & 4 could not have been served since long, proceeding against them be closed and proceeded against remaining respondent Nos.1 & 2 only. This has been assailed jointly by the complainant and so also by respondent Nos.1 & 2 and jointly submits that once respondent No.3 and 4, who were active partners of the firm, have signed cheques in question, learned trial Judge without making any efforts to get them served by non-bailable warrants closed the proceedings against them which has caused prejudice not to the complainant, but also to respondent Nos.1 & 2 as well and this action of learned trial Judge cannot be said to be justified.

No one appeared despite service on behalf of respondent Nos.3 & 4. Vakalatnama has been filed by their counsel, but he too has not chosen to appear on their behalf.

I have considered the submission of counsel for parties and perused the order impugned.

Learned trial Judge took cognizance on complaint filed u/s.138 of Negotiable Instruments Act against all the four respondents and so far as respondent No.3 and 4 are concerned without any further loss of time immediately on taking cognizance by learned trial Judge, approached this court by filing Criminal Misc. Petition No.1567/93 under Section 482 Cr.P.C. questioning the order of cognizance which was dismissed by this court by a detailed order on 17th February, 1995 which makes it clear that they were fully aware of criminal proceedings being initiated against them by learned trial Judge.

It has been brought to the notice of this court that under Section 141 of the Act, all the partners of the firm are equally responsible. However, they will be at liberty to raise their objections as to whether offence has been committed with or without any knowledge. The fact remains that all the partners of the firm were equally responsible and learned Trial Judge has rightly took cognizance against all of them. Once the cognizance was taken and the misc. petition filed by the respondent No.3 and 4 before this court was dismissed on 17th February, 1995, it was all the more necessary for learned trial Judge to proceed against them after taking proper steps to get them served even by non-bailable warrants. If the bailable warrants could not have been executed, it appears that learned Trial Judge has

not proceeded in accordance with law taking note of Sections 82 & 83 of the Code to get the summons served upon respondent Nos.3 & 4 as well and merely because some delay was caused, that should not be considered to be a basis in dropping the proceedings against them in the facts of instant case.

Accordingly, all the four petitions stand allowed. The order of the learned Trial Judge dated 7th August, 1999 is hereby quashed and set aside. He is directed to take steps available under law in getting respondent No.3 and 4 served against whom cognizance has been taken which may ensure their presence and proceed further in accordance with law.

Since it is an old matter, it is expected from learned trial Judge to decide the same expeditiously. While doing so, the learned Trial Judge may also take appropriate action for getting the service effected by taking note of Sections 82 and 83 of the Code. Record be sent back to trial court forthwith.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.